

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**CRM-M-27780-2020.
Date of Decision: 03.02.2021.**

Hardeep Singh @ Sidhu

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. H.S. Sitta, Assistant Advocate General, Punjab.

Lalit Batra, J.(Oral)

Case has been taken up for hearing through Video Conferencing.

This 2nd petition under Section 439 Cr.P.C has been moved by petitioner-**Hardeep Singh @ Sidhu** for grant of regular bail in case FIR No.19 dated 05.04.2019 under Section 21 of NDPS Act, registered at Police Station Special Task Force, District STF, SAS Nagar.

Learned counsel for the petitioner *inter alia* contends that the allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that for want of compliance of provisions of Sections 42 and 50 of NDPS Act, prosecution version appears to be doubtful. He further urges that though alleged recovery of contraband was effected on 05.04.2019, whereas

sample parcel was sent to FSL on 18.04.2019 for analysis and as such inordinate delay of 13 days in sending the sample parcel for analysis, chances of its interpolation cannot be ruled out. He further urges that petitioner is in custody since 05.04.2019 and is no more required for any investigation by the Investigating Agency. He further submits that challan has already been presented in the Court and trial has commenced. He further urges that since trial of the case would take sufficient time to conclude, no useful purpose would be served by keeping the petitioner in custody further and he may be released on bail.

On the other hand, learned State counsel while opposing instant petition has vehemently argued that immediately on receipt of secret information, it was reduced into writing and the same was sent by the Investigating Officer to his immediate official superior and as such provisions of Section 42 of NDPS Act were complied with. He further urges that provisions of Section 50 of NDPS Act were also complied with in letter and spirit as personal search of petitioner as per his option was conducted in the presence of Gazetted Officer. He further urges that since compliance of provisions of Section 52-A of NDPS Act was made at the earliest, chances of interpolation of sample parcel are totally ruled out of consideration. He further urges that petitioner was apprehended while having conscious possession of contraband (Heroin) weighing 460 grams and the said quantity falls within “commercial quantity”. He further submits that petitioner is a habitual offender being involved in two

other cases of NDPS Act. He further submits that since petitioner is involved in number of NDPS cases and the present case pertains to “commercial quantity” of contraband (Heroin), thus, in view of bar created by Section 37 of NDPS Act, he does not deserve the concession of bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition, documents placed on record at the instance of petitioner.

Hon'ble Supreme Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under [NDPS Act](#). In case *Union of India Vs. Ram Samujh and Ors., 1999(9) SCC 429*, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the [NDPS Act](#), has succinctly observed about the adverse effect of such

activities in [Durand Didier v. Chief Secy., Union Territory of Goa \(1989\(2\) RCR\(Criminal\) 505: \(1990\) 1 SCC 95\)](#) as under:-

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the [NDPS Act](#) should not be released on bail during trial unless the mandatory conditions provided in [Section 37](#), namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on

bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in spirit with which Parliament, after due deliberation, has amended.”

Further, Hon'ble Supreme Court in case **State of Kerala Etc. Versus Rajesh Etc., 2020(1) R.C.R. (Criminal) 818** while dealing with provisions of Section 37 of NDPS Act, has laid down as under:-

“20. The scheme of [Section 37](#) reveals that the exercise of power to grant bail is not only subject to the limitations contained under [Section 439](#) of the Cr.P.C., but is also subject to the limitation placed by [Section 37](#) which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the

alleged offence. In the case in hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the Cr.P.C, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

Without commenting anything on the merits of the case lest it may prejudice the outcome of the trial but taking into consideration the fact that allegedly petitioner was apprehended while having conscious possession of contraband (Heroin) weighing 460 grams, the fact that petitioner is involved in two other cases of NDPS Act, the fact that alleged contraband recovered from the petitioner falls under “commercial quantity” and the fact that allegations against the petitioner are serious in nature, thus, in view of rigours of Section 37 of NDPS Act, he does not deserve the concession of bail.

As a sequel to above, instant petition for grant of regular bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

03.02.2021

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Whether speaking/reasoned	:	Yes/ No
Whether reportable	:	Yes/ No